

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE: §
§
INSPIRE INSURANCE SOLUTIONS, INC., § CASE NO. 02-41228-DML-11
and INSPIRE CLAIMS MANAGEMENT, INC. §
§
DEBTORS. § (Jointly administered)
§ Hearing Date: Tuesday, March 5, 2002
§ Hearing Time: 11:30 a.m.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
WITH RESPECT TO THE DEBTORS' AMENDED MOTION
PURSUANT TO 11 U.S.C. §§ 105(a) AND 366(b)
FOR AN ORDER DETERMINING THAT ADEQUATE
ASSURANCE HAS BEEN PROVIDED TO UTILITY COMPANIES**

On March 5, 2002, a hearing was held on the Debtors' Amended Motion Pursuant to 11 U.S.C. §§ 105(a) and 366(b) for an Order Determining That Adequate Assurance Has Been Provided to Utility Companies (the "Motion"). The Court, after consideration of the evidence, the argument of counsel, and the record of past proceedings in this case, makes the following findings of fact and conclusions of law: ¹

FINDINGS OF FACT

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. On February 15, 2002 (the "Commencement Date"), INSpire Insurance Solutions, Inc. and INSpire Claims Management, Inc. (the "Debtors" or, collectively, the "Debtor") commenced their cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors

¹ Pursuant to FED. R. BANKR. P. 7052, findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate.

continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. The Debtor filed its Motion Pursuant to 11 U.S.C. §§ 105(a) and 366(b) for an Order Determining That Adequate Assurance Has Been Provided to Utility Companies on February 15, 2002 and served the document on the utility companies and the official service list.

4. The Debtor filed its Amended Motion Pursuant to 11 U.S.C. §§ 105(a) and 366(b) for an Order Determining That Adequate Assurance Has Been Provided to Utility Companies on March 4, 2002 and served the document on the utility companies listed on Exhibit A (the “Utility Companies”) and the official service list.

5. The Debtor is a party to executory contracts which are not common service agreements used with the typical customer with (i) AT&T Corp. (“AT&T”); (ii) BellSouth Telecommunications, Inc. (“BellSouth”); (iii) AT&T Wireless Services through AWS National Accounts, L.L.C. (“AT&T Wireless”); and (iv) Suncom, member of the AT&T Wireless Network (“Suncom”). The executory contracts that the Debtor has with AT&T, Bell South, AT&T Wireless and Suncom are presently in existence and have been neither assumed nor rejected.

6. The Debtor has on deposit with Fort Worth Water Department the amount of \$7,625.00 which exceeds, by more than a factor of two, the average monthly cost of services provided to the Debtor by the Fort Worth Water Department.

7. The Debtor incurred no meaningful amount of secured debt prior to the Commencement Date or during this case. In a worst-case scenario, liquidation of the Debtor would produce at least five to seven million dollars of value. Thus, the Debtor has assets sufficient to pay all foreseeable costs of administration claims, including any utility bills which may arise but not be satisfied on a current basis.

8. The deposit presently with the City of Fort Worth Water Department is more than adequate to assure the City of Fort Worth that it will not suffer any loss through continued provision of service to Debtor.

9. Debtor has not shown that it has no legal or practical alternative to payment of the prepetition claim of any Utility Company.²

CONCLUSIONS OF LAW

1. As a matter of law, a party to a contract with a debtor-in-possession, other than a common service agreement³ entered into with a typical consumer, is not protected by Section 366 of the Bankruptcy Code; the relationship between the debtor and that party is governed by Section 365 of the Bankruptcy Code.

2. Regardless of prepetition defaults, pursuant to Section 365(d)(3) of the Bankruptcy Code, parties other than the Debtor must perform their obligations under any contract with the debtor for so long as the debtor continues to perform its obligations, and even then may cease to perform only upon order of the Bankruptcy Court.

3. Since a contract is property of the estate, a contract may not be unilaterally terminated by a party other than the debtor. *In re Computer Communications*, 824 F.2d 725 (9th Cir., 1987).

4. With respect to AT&T, Bell South, AT&T Wireless and Suncom, each of those entities is obligated to continue to perform its obligations with the Debtor until such time as the Debtor rejects the contract or any such entity is relieved by this Court of the burden of performing under the contract.

²Debtor sought authorization in certain instances to pay the prepetition claims of Utility Companies in lieu of providing such entities adequate assurance within the meaning of Section 366(b) of the Bankruptcy Code.

³The Court offers no opinion whether any service agreement, whether common or not, is subject to Section 365 of the Code.

5. Inasmuch as the costs of administration in this case have been determined by this Court to be virtually certain of being paid in full, a cost of administration claim constitutes adequate assurance of payment for a utility within the meaning of Section 366(b). Therefore, the Debtor does not need to post any deposit or other form of security in connection with any utilities which do not have deposits and are not parties to formal contracts with the Debtor.

6. Pursuant to this Court's opinion in *In re Coserv*, the Debtor has not shown any necessity for payment of pre-petition claims of those entities listed on Exhibit A which are utilities and do not have deposits and are not subject to contracts. *See In Re: Coserv, L.L.C.*, 2002 Bankr. LEXIS 6 (Bankr. N. D. Tx. 2002).

7. The cost of administration claim that each Utility Company will have by reason of services provided after the commencement of the case constitutes adequate assurance of payment within the meaning of 11 U.S.C. 366(b), and therefore such parties, in accordance with Section 366, are required to continue to provide services to the Debtor until further order of this Court.

DATED: March 20, 2002

Original Signed by D. Michael Lynn

THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE